

Gao v Liang

2024 NY Slip Op 31638(U)

May 7, 2024

Supreme Court, New York County

Docket Number: Index No. 154921/2018

Judge: Nancy M. Bannon

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. NANCY M. BANNON PART 61M

Justice

-----X

GEORGE GAO, TSUEI YEN GAO, FENG YU GAO,

Plaintiffs,

- v -

ETHAN CHEN LIANG, HELEN CHEN-LIANG, 4F
MANAGEMENT LLC,

Defendants.

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INDEX NO. 154921/2018

MOTION DATE _____

MOTION SEQ. NO. 014

**DECISION, ORDER and
JUDGMENT**

The following e-filed documents, listed by NYSCEF document number (Motion 014) 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 301, 302, 303, 304, 305, 306, 307, 314, 316, 317 were read on this motion to/for CONTEMPT.

I. BACKGROUND

In this action seeking damages upon theories of, *inter alia*, fraud and breach of fiduciary duty, a jury rendered a verdict in favor of the plaintiffs and against the defendants Ethan Chen Liang (Ethan) and Helen Chen Liang (Helen) in the amounts of \$315,000.00 in compensatory damages, and \$185,000.00 in punitive damages. On September 12, 2022, the plaintiffs entered judgment in the total sum of \$473,178.66 (the "2022 Judgment"). When the defendants failed to satisfy the judgment, the plaintiffs, George Gao, and his parents, Tsuei Yen Gao and Feng Yu Gao, served an information subpoena on each of the defendants on or about December 15, 2022. The subpoenas required the defendants to provide a range of detailed information regarding their assets, including real estate holdings, business interests and ownership, bank and investment accounts, and trusts. The defendants failed to comply.

The plaintiffs moved pursuant to CPLR 5223 and 2308(b) for an order punishing the defendants for contempt or to compel compliance with the subpoenas (MOT SEQ 013). By an order dated February 9, 2023, the court granted the motion to the extent of directing the defendants to comply within 30 days (the "February 2023 Order"). The motion was otherwise

denied without prejudice. The defendants were expressly cautioned that failure to comply with an information subpoena may result in a warrant of arrest. They failed to comply.

The plaintiffs then moved pursuant to CPLR 2308 for an order punishing the defendants for contempt (MOT SEQ 014). In opposition, the defendants argued that the plaintiffs did not properly serve the subpoenas. By order dated June 2, 2023, the court granted the plaintiffs' motion to the extent of directing them to "reserve the [2022 Judgment] and information subpoenas, as well as this order, on the defendants by overnight mail service, without necessity of any signature, within 10 days and directing the defendants to comply in full with the subpoenas within 20 days of such service (the "June 2023 Order") (collectively, with the February 2023 Order, "the Court's Prior Orders"). The court once again expressly cautioned the defendants that failure to comply with an information subpoena may result in a warrant of arrest. The plaintiffs served the defendants in compliance with the June 2023 Order on June 5, 2023. The defendants once again failed to comply. On June 28, 2023, the plaintiffs filed an affirmation of noncompliance, as contemplated by the June 2023 Order. By an order dated August 1, 2023, the court directed the defendants to appear for a contempt hearing on October 18, 2023.

On October 18, 2023, plaintiff George Gao appeared with counsel but the defendants, Ethan and Helen, both failed to appear. Only their counsel appeared. The court gave the defendants yet another chance to appear later the same day. They again failed to appear.

At the contempt hearing, Gao credibly testified that the plaintiffs had not received any payments from the defendants in satisfaction of the 2022 Judgment, nor had they received any meaningful information from the defendants regarding the defendants' assets, in violation of the Court's Prior Orders directing compliance with the information subpoenas seeking that information. Gao testified that the defendants took his family's entire life savings by their fraudulent scheme and left them in financial ruin, and that they are still trying to recover from the loss. Gao explained that he is still being pursued by mortgage lenders to repay debts stemming from the defendants' fraudulent use of Gao's name to purchase real property, and that his credit score remains negatively impacted. Gao further testified that he believed that the defendants' conduct impeded, impaired, and prejudiced the plaintiffs' rights. Gao testified that he had also filed a criminal complaint against the defendants with the New York County District Attorney and that case remained open.

In addition to Gao's testimony, the plaintiffs introduced exhibits into evidence: (1) copies of the defendants' responses to the subject information subpoenas, dated October 3, 2023 and October 4, 2023, and (2) copies of 3 checks made payable to the "Helen Chen Liang Irrevocable Trust Dated 12/31/2011" – (i) a 2011 cashier's check in the amount of \$2,143,750, drawn on a Chase Bank account, showing "Larry A Wohl" as Remitter, (ii), a second cashier's check in the amount of \$8,585.26, dated March 25, 2029, from First Republic Bank, and (iii) a Chase Bank check dated March 26, 201, showing a payment of \$199,437.36 paid from an attorney escrow account. The plaintiffs obtained the checks in response to an information subpoena served on non-party attorneys.

The court noted that the defendants' responses to the information subpoenas were untimely, as they were served in October 2023, more than ten months after the subpoenas were first served, and eight months after the February 2023 court order directing compliance. Further, the defendants' responses were plainly deficient, devoid of any meaningful detail and consisting almost entirely of one-word answers. For example, Helen's responses lacked any information regarding any assets, accounts, or properties she owns. She merely responded with answers like "NONE", "N/A", or "\$0", throughout, seemingly indicating that she possesses no assets, accounts, or properties whatsoever. In his response, Ethan disclosed that he had four bank accounts, that the accounts at Chase and Bank of America accounts were closed and that his accounts at Cathay and Citi had extremely low balances remaining, \$1 and \$106, respectively. The court noted that Ethan inexplicably wrote the name of plaintiff George Gao next to the responses of "Chase" and "Bank of America" and the name "Ying Chen" next to "Cathay." Ethan further responded that he was a beneficiary of a trust account at Citi, but that the trust account has only \$500 left in assets as of October 2023.

The defendants presented no witnesses or evidence. Counsel for the defendants argued that he believed his clients had complied with the court's order and that they failed to appear for the hearing only because they believed that the case was settled pursuant to a purported agreement reached in a related enforcement proceeding concerning real estate pending before Justice Hagler of this court (Gao et al v Ethan Chen Liang et al, Index No. 152567/23). The court rejected both arguments, noting that there was clear non-compliance by his clients and that no stipulation of settlement or stipulation of discontinuance had been filed in that case, and

that, in any event, any purported settlement had no bearing on this proceeding regarding the defendants' contempt of the Court's Prior Orders.¹

II. DISCUSSION

CPLR 5223 provides that “[a]t any time before a judgment is satisfied or vacated, the judgment creditor may compel the disclosure of all matter relevant to the satisfaction of the judgment, by serving upon any person a subpoena.” That is, “[a] judgment debtor is entitled to discovery from either the judgment debtor or a third party in order ‘to determine whether the judgment debtor[] concealed any assets or transferred any assets so as to defraud the judgment creditor or improperly prevented the collection of the underlying judgment’ (Young v Torelli, 135 AD2d 813, 815 [1987]).” Technology Multi Sources, S.A. v Stack Global Holdings, Inc., 44 AD3d 931 (2nd Dept 2007). CPLR 5223 further provides that “failure to comply with the subpoena is punishable as a contempt of court.” The failure to comply with an information subpoena is governed by CPLR 2308(b). See CPLR 5224(a)(3)(iv). CPLR 2308(b) allows the court to issue a warrant directing a sheriff to bring a witness before the person or body who issued the subpoena and, if the subpoenaed individual “refuses without reasonable cause to be examined,” the court, “upon proof by affidavit, may then issue a warrant directed to the sheriff of the county where the person is, committing him to jail, there to remain until he [or she] submits to do the which he [or she] was so required to do or is discharged according to law.”

“Contempt is a drastic remedy which should not be granted absent a clear right to such relief.” Pinto v Pinto, 120 AD2d 337, 338 (1st Dept. 1986). To prevail on a motion to punish a party for civil contempt, a party must establish that the party to be held in contempt violated a clear and unequivocal court order, known to the parties. See Judiciary Law § 753(A)(3); see also McCormick v Axelrod, 59 NY2d 574 (1983), *amended* 60 NY2d 652 (1983). The movant must also establish that the party to be held in contempt engaged in conduct that was calculated to, and actually did defeat, impair, impede, and prejudice the rights of the movant. See 450

¹ The court notes that, on October 16, 2023, just two days prior to the scheduled contempt hearing in this action, counsel for the defendants filed an Order to Show in that proceeding to enjoin the plaintiffs from enforcing the 2022 judgment. By an order dated April 12, 2024, Justice Hagler, denied the defendants' motion. Furthermore, the transcript of that oral argument, which was held March 20, 2024, indicates that no settlement had been finalized even as of that date, much less in October 2023, as represented by the defendant's counsel.

West 14th St. Corp. v 40-56 Tenth Avenue, LLC, 15 AD3d 166 (1st Dept. 2005); Lipstick, Ltd. v Grupo Tribasa, S.A. de C.V., 304 AD2d 482 (1st Dept. 2003). The plaintiffs met this burden.

The Court's Prior Orders clearly, unequivocally and repeatedly directed the defendants to provide responses to the subpoenas. The plaintiffs' proof established the defendants' repeated failure to comply with the subject information subpoenas and the Court's Prior Orders, and that the defendants' responses to the information subpoenas, when finally served, were grossly untimely and wholly deficient, as they were devoid of any meaningful substance or detail, consisting almost entirely of one-word answers. To the extent the responses offered any information, they falsely indicated the defendants had few, if any, assets. Moreover, the defendants' responses are contrasted by the checks made payable to Helen Chen Liang Irrevocable Trust, indicating that one or both defendants are the beneficiaries of sizeable trust accounts. Notably, their subpoena responses are also in sharp contrast to their 2022 trial testimony, which included a representation by Helen that she grew up in a wealthy family whose net worth recently approximated \$10-15 million, kept in the form of cash and jewels, and a narrative that had the defendants lending the plaintiffs \$4.62 million and Ethan personally delivering a suitcase and/or jacket pockets full of cash to George Gao.

Furthermore, the defendants failed, without excuse, to appear in person at the contempt hearing, as directed in the court's order dated August 1, 2023, depriving the plaintiffs yet again of an opportunity to examine them regarding their assets. In so doing, and as demonstrated by the plaintiffs' testimony and documentary evidence, the defendants have frustrated the plaintiffs' efforts to locate the defendants' assets to satisfy the 2022 Judgment.

III. CONCLUSION

Accordingly, upon the foregoing papers and this court's prior orders, it is

ORDERED that the motion of the plaintiffs George Gao, Tsuei Yen Gao, and Feng Yu Gao seeking an order holding the defendants Ethan Chen Liang and Helen Chen Liang in contempt of court is granted; and it is further

ORDERED and ADJUDGED that the conduct of the defendants Ethan Chen Liang and Helen Chen Liang was willfully contemptuous of this court and was calculated to and actually did defeat, impair, impede, or prejudice the rights of the plaintiffs; and it is further

ORDERED that the plaintiffs shall serve a copy of this order with notice of entry upon the defendants Ethan Chen Liang and Helen Chen Liang by Federal Express or overnight mail within 10 days of their receipt thereof; and it is further

ORDERED that the defendants Ethan Chen Liang and Helen Chen Liang shall voluntarily appear before the Supreme Court, New York County, 60 Centre Street, Part 61, Room 232, New York, New York, 10007, within 30 days of the date of the service upon them of this order with notice of entry, during working hours on a weekday to answer this order of contempt; and it is further

ORDERED that the defendants Ethan Chen Liang and Helen Chen Liang are directed to pay the plaintiffs, within 30 days of the date of the service upon them of this order with notice of entry, the sum of \$473,178.66, representing the principal amount of the judgment which the court has previously obligated them to pay, plus statutory interest from September 12, 2022, the date that the judgment was entered; and it is further

ORDERED that, unless the defendants shall purge themselves of the aforesaid contempt by paying the judgment in the sum of \$473,178.66, plus statutory interest from September 12, 2022, upon the failure of one or both of the defendants Ethan Chen Liang and Helen Chen Liang to voluntarily appear before the Supreme Court to answer this order of contempt, the court will issue a warrant pursuant to CPLR 2308(b) directing the sheriff to bring the non-appearing defendant(s) before the court, and it is further

ORDERED that if one or both of the defendants Ethan Chen Liang and Helen Chen Liang refuse without reasonable cause to be examined or produce relevant items demanded by the plaintiffs' information subpoenas, then the court, upon proof by affidavit, may issue a warrant to the sheriff of the county where he or she is residing or situated, committing him or her to jail, there to remain until he or she submits to the acts that he or she was required to do or is discharged according to law, and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision, Order, and Judgment of the court.



NANCY M. BANNON, J.S.C.
HON. NANCY M. BANNON

5/7/2024
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: